CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

DIVISION BENCH – COURT NO. 1

Excise APPEAL No. 2276 of 2010

(Arising out of **Order-in-Original** No. 03/2010-Adjn.(Commr.)CE, dated 30.07.2010 passed by Commissioneer of Customs & Central Excise, Hyderabad-IV Commissionerate)

SAMSAA RUBBER & POLYMERS PVT. LTD. .. APPELLANT
Plot No. 36/C, Road No. 9,
Phase-I, S.V. Coop. Industrial Area, IDA
Jeedimetla
HYDERABAD – 500 055.
Telangana

VERSUS

The Commissioner of Customs, Central .. RESPONDENT
Excise & Service Tax,
Posnett Bhavan,
Tilak Road, Ramkoti,
HYDERABAD – 500 001.
Telangana

Appearance
Shri None for the appellant

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

Coram: Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)
Hon'ble Ms. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. A/30588/2019

Date of Hearing: 03.06.2019
Date of Decision: 03.06.2019

[ORDER PER: Ms. RACHNA GUPTA)

1. This appeal has been preferred against Order-in-Original No. 03/2010-Adjn.(Commr.)CE, dated 30.07.2010 and the said orders are adjudicated as per the show cause notice No. 79/2009-Adjn (Commr.), dated 15.10.2009.

2. The relevant factual matrix for the present appeal is that the assessee/appellants are engaged in the manufacture and sale of PVC Suction Pipes, PVC Krishi Pipes, PVC Water Hose Pipe, PVC Water Stop, Rubber Hose and Rubber Sheet falling under Chapters 39 & 40. The appellants had obtained Central Excise Registration and submitting quarterly ER3 returns. The department observed that the appellants have crossed the SSI exemption limit of Rs. 1,50,00,000/- in the month of October 2008. Accordingly, through the aforesaid show cause notice, the department proposed for the above products to be classified under chapter heading 3917.39 of Central Excise Tariff Act. 1985 as excisable goods, accordingly the duty recovery of Rs. 58,14,139/- was proposed to be recovered along with interest and the proportionate penalty. Aggrieved, the present appeal has been preferred.

3. When this matter was called, none was present for the appellant and it has been observed from the records that on previous dates of hearings also, the appellant did not present despite notices. In view thereof and in view of the guidelines of Hon'ble Apex Court in the case of Balaji Steel Re-rolling Mills vs. CCE, Customs reported in 2014 (310) ELT 209, the appeal is to be heard and disposed on merits.

4. Ld. DR has submitted that the goods of the assessee, admittedly, are the pipes and rubber hose and rubber sheets classified under chapter 3917. It is his submission that the appellant has wrongly classified the products

under heading 3917.31 despite the fact that the pressure of the pipes is very much less than 27.6 Mps as mentioned in chapter 3917.31. The adjudicating authority has rightly confirmed the demand and imposed the penalty. There is no infirmity of the order and the appeal is therefore to be rejected.

5. After hearing both sides and perusing the records, it is seen that the products in question are PVC Krishi Pipes of the burst pressure of 1.0 Mpa, PVC suction pipes of burst pressure of 1.5 Mpa and PVC Garden Pipe of 0.7 Mpa. Thus the products have the pressure of much less than 27.6 Mpa as is minimum required under chapter 3917.31. This particular observation is sufficient for us to hold that the product cannot be classified under section 3917.31. Thus, the products being one or the other kind of pipe that have been classified under section 39 in the category of 3917.39.

6. The appellant has claimed non excisability of their product on two grounds (i) that the pipes are flexible and are made out of plastic recycled scrap and (ii) the tariff is silent about the burst work pressure less than 27.6 Mpa. We observe that Chapter note 8 of Chapter 39 reads as under:

> *"For the purposes of heading 3917, the expression "tubes, pipes and hoses"means hollow products, whether semi-manufactures or finished products, of a kind generally used for conveying, conducting or distributing gases or liquids (for example ribbed garden house, perforated tubes). This expression also includes sausage casings and other lay flat tubes. However, except for the last mentioned, those having an internal cross section other than round, oval, rectangular (in which the length*

does not exceed 1.5 times the width) or in the shape of a regular polygon or not to be regarded as tubes, pipes and hoses but as profile shape."

7. From the above it makes clear that all flexible or non-flexible tubes, pipes and hoses are excisable goods even if they are classified under chapter heading 3917.31 having work pressure of more than 27.6 Mpa and are also excisable and the duty of 16% is to be levied as per Central Excise Act. These observations coupled with the admission of the appellant that the product is classifiable are sufficient for us to hold that except for the burst pressure criteria, any pipe, tube or hose is excisable goods. The burst pressure of appellant's product is admittedly less than 27.6 Mpa as is minimum required to claim exemption. Thus, we are of the opinion that none of the grounds of the appellant assessee as mentioned above affect the said excisability. Resultantly, we do not find any infirmity in the order denying the classification of the impugned goods under 3917.31 and holding it as a product classifiable under 3917.39 i.e. the hollow pipes which do not find any other classification in the said chapter, the demand confirmed is, therefore, sustainable.

8. Coming to the issue of invoking the extended period and levying of penalty, we are of the opinion that since the appellant is found to have wrongly classified his product to such a category to which no duty is leviable, as already observed above, the goods are otherwise excisable, the act is held as wilful intention to evade the duty. The said act of the appellant is definitely an act of misrepresentation of the facts. Therefore,

we hold that adjudicating authority was right to invoke the extended period of limitation and the penalties are also held to have been rightly imposed.

9. In view of these findings, we uphold the order of the first appellate authority.

10. Consequent to discussion, as above, the appeal stands rejected.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(Ms. RACHNA GUPTA)
MEMBER (JUDICIAL)

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